

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BAILEY ROTH,

Plaintiff,

v.

BASF CORPORATION, et al.,

Defendants.

Case No. C07-106 MJP

ORDER REQUESTING
SUPPLEMENTAL BRIEFING
ON PLAINTIFF'S MOTION TO
AMEND

This matter comes before the Court on Plaintiff's motion to amend his complaint. (Dkt. No. 170.) After reviewing the motion, Defendants' response (Dkt. No. 187), Plaintiff's reply¹ (Dkt. No. 193), and all papers submitted in support thereof, the Court finds the pleadings insufficient to determine the merits of the motion and calls for additional briefing limited to ten pages per side. Plaintiff's briefing is due on Friday, May 16, 2008 and Defendants' briefing is due on Wednesday May 21, 2008. The briefing should address the issues discussed below.

Discussion

On February 1, 2008, Plaintiff brought a motion to "File Corrected Complaint." (Dkt. No. 66.) Although Plaintiff labeled its motion a "correction," the Court construed the motion as a request to add a new party. The Court denied that motion because it did not comply with the Federal Rules of Civil Procedure for adding a new party. (Dkt. No. 101.) The Court anticipated

¹Instead of submitting a reply brief, Plaintiff filed a declaration "regarding the BASF AG 2006 Annual Report Filed with the SEC." (Dkt. No. 193.) This submission does not substantively respond to the arguments raised by Defendants in their response brief. Without direction from counsel, the Court cannot be expected to extract relevant information from such exhibits and determine the effect on Plaintiff's argument.

1 that Plaintiff would promptly bring a motion to amend in accord with Rules 15 and 16.

2 Plaintiff now brings a motion “to amend complaint to substitute BASF Construction
3 Chemicals, LLC for BASF Corporation.” (Dkt. No. 170.) This motion effectively seeks to add
4 BASF Construction Chemicals, LLC as a defendant in this action and to dismiss Defendant BASF
5 Corporation. The Court understands that both parties now agree that BASF Construction
6 Chemicals, LLC and BASF Corporation are two distinct legal entities.

7 In evaluating the merits of this motion, the Court must apply Rules 15 and 16 of the
8 Federal Rules of Civil Procedure.² Because the parties failed to address the relevant analyses in
9 their pleadings, the Court calls for supplemental briefing on the three issues discussed below. The
10 parties are directed to include relevant citations to the record and should offer specific examples
11 to support their arguments.

12 1. Plaintiff Must Make a Rule 16(b) Showing of “Good Cause”

13 The Court’s scheduling order, issued pursuant to Fed. R. Civ. P. 16, set a deadline for
14 joining additional parties of July 31, 2007. (Dkt. No. 23.) Before adding a new party, Plaintiff
15 must first show “good cause” for extending the July 31, 2007 deadline. Johnson v. Mammoth
16 Recreations, 975 F.2d 604, 608-09 (9th Cir. 1992) (a motion to amend complaint was construed
17 as a de facto motion to modify joinder deadline and could only be granted on showing of “good
18 cause”).

19 The parties are directed to address whether Plaintiff can show good cause for amendment
20 under Rule 16(b). The “good cause” standard considers the diligence of the party seeking the
21 amendment. Johnson, 975 F.2d at 609. To succeed on his motion, Plaintiff must show that he
22 could not have reasonably met the Court’s deadline for joinder of additional parties despite his
23 diligence in investigating and developing his case. Id. Specifically, Plaintiff must inform the
24 Court of the steps he took to identify the corporate structure of the existing and proposed

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26 ²The pleadings submitted by both parties contain incorrect references to the Federal Rules of Civil Procedure.
27 Counsel are reminded that the Rules have been updated for 2008 and that the most recent references should be used.

1 defendants. Plaintiff must also disclose when that investigation took place.

2 2. Plaintiff Must Show That Amendment is Proper Under Rule 15(a)

3 If Plaintiff makes a showing of good cause under Rule 16(b), the Court must address
4 whether amendment is proper under Rule 15. The Court has discretion to allow a party to amend
5 its pleadings. In exercising its discretion, “a court must be guided by the underlying purpose of
6 Rule 15 to facilitate decision on the merits, rather than on the pleadings or technicalities.” United
7 States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981). Accordingly, the policy of favoring
8 amendments should be applied with “extreme liberality.” Id. This liberality “is not dependent on
9 whether the amendment will add causes of action or parties[.]” DCD Programs, Ltd. v. Leighton,
10 833 F.2d 183, 186 (9th Cir. 1987).

11 The Ninth Circuit has emphasized Rule 15's liberal amendment policy. Ascon Properties,
12 Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989). Generally, the Court should grant
13 leave to amend a complaint unless amendment: (1) would cause prejudice to the opposing party;
14 (2) is sought in bad faith; (3) is futile; or (4) creates undue delay. Leighton, 833 F.2d at 185-187.
15 These factors do not carry equal weight; “delay, by itself, is insufficient to justify denial of leave to
16 amend.” Id. at 185. Because the parties failed to address these factors in their pleadings, the
17 Court cannot make a determination on whether amendment is proper under Rule 15(a) without
18 supplemental briefing. Specifically, Defendants should address whether they will suffer prejudice
19 if the amendment is granted.

20 3. Plaintiff Must Show That Adding the New Defendant is Proper Under Rule 15(c)

21 Finally, an amendment adding BASF Construction Chemicals, LLC as a defendant can
22 only be proper if the amendment relates back to the date of the original pleading pursuant to Fed.
23 R. Civ. P. 15(c). An amendment that adds a new party will relate back to the original pleading
24 when: (1) the claims alleged against the new party arise out of the same transaction or occurrence
25 giving rise to the original allegations; (2) the new party has received notice of the action within
26 the statute of limitations period such that its defense is not prejudiced; and (3) the new party knew
27

1 or should have known that, but for a mistake concerning identity, the action would have been
2 brought against it. Martell v. Trilogy, Ltd., 872 F.2d 322, 323-324 (9th Cir. 1989); see also Miles
3 v. Department of Army, 881 F.2d 777, 782-3 (9th Cir. 1989) (allowing substitution of proper
4 government official defendant after the statutory period for commencing an action had expired
5 because proper defendant was sufficiently notified of the original action within the statutory
6 period); Boeing Co. v. Aetna Casualty & Sur. Co., 1990 U.S. Dist. LEXIS 19927 (W.D. Wash.
7 Apr. 16, 1990) (granting leave to substitute the name of the correct defendant, when both old and
8 new defendants, the parent corporation and its subsidiary, were on notice of the action). Plaintiff
9 must meet all three factors to show that BASF Construction Chemicals, LLC should be properly
10 added as a defendant. The parties are directed to offer the Court specific facts addressing when
11 BASF Construction Chemicals, LLC was on notice of the action.

12 Conclusion

13 After finding the pleadings insufficient to determine the merits of Plaintiff's motion, the
14 Court calls for additional briefing limited to ten pages per side. Plaintiff's briefing is due on
15 Friday, May 16, 2008 and Defendants' briefing is due on Wednesday May 21, 2008.

16 The Clerk is directed to send a copy of this order to all counsel of record.

17 Dated: May 13, 2008.

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Marsha J. Pechman
U.S. District Judge